

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Division**

**CRI/bal/00054/2025**

**B E T W E E N**

**N. M.**

**(A Juvenile)**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Before:** The Honourable Madam Justice Renae McKay

**Appearances:** Applicant along with his mother appeared Pro Se

Ashton Williams for the Prosecution

**Hearing Dates:** 17<sup>th</sup> October, 2025

**BAIL DECISION**

**McKay, J.**

[1.] The Applicant, N. M. (“**hereinafter referred to as the Applicant**”) made an application to be admitted to bail on 3<sup>rd</sup> July, 2025. The Applicant is charged with the following:-

- i. Two counts of Murder contrary to Section 290 (1) and 291 (1) (b) of the Penal Code, Chapter 84 and
- ii. One count of Attempted Murder contrary to Section 292 of the Penal Code, Chapter 84.

[2.] The Applicant made a previous application for bail on 22<sup>nd</sup> April 2025 before Williams J and was denied bail on 20<sup>th</sup> May 2025.

- [3.] The Applicant by way of his bail application stated that he was arrested on 4<sup>th</sup> December 2024 and was subsequently charged with the aforementioned offences. He was denied bail by Magistrate Shaka Seville on 9<sup>th</sup> December 2024. Magistrate Seville reasons for denying bail was a public safety concern and that the Applicant has gang affiliations.
- [4.] The Applicant along with his mother appeared pro se. The Applicant made submissions on his own behalf. He submitted that retaliation would not be an issue because he did not wish to stay in Nassau, Bahamas if granted bail.
- [5.] The Applicant continued to maintain his position that fear of retaliation is not a factor because he is seeking leave of the Court, if bail is granted, that he will have the opportunity to relocate to Bennet's Harbour, Cat Island with his grand aunt with whom he lived with for some time in August 2023 for six weeks to three months. He maintained that this will reduce the risk of being a victim to any retaliatory acts by a third party.
- [6.] He also denied any involvement in the commission of the crime and giving a statement to the police on the 5<sup>th</sup> and 6<sup>th</sup> December 2024 which placed him at the scene of the crime.
- [7.] The Applicant's mother testified that in respect to the bail application, if he is granted bail she will send the juvenile to Cat Island to live with a relative and she would travel back and forth. She also clarified that the Applicant went to Cat Island late July 2023. She also expressed that she understands Williams J. concerns of retaliation against the Applicant which is why she doesn't want him to reside in Nassau if granted bail.
- [8.] The Prosecutor opposed the bail application. He sought to rely on the Affidavit of Calnan Kelly which was filed 16<sup>th</sup> September 2025. He submitted that the Applicant is charged with serious offences. He continued that the evidence creates a reasonable suspicion which link him to the offences.
- [9.] Mr. Williams also relied on the statement of witness Beta which placed the Applicant at the scene of the crime along with his co-accused. He continued that during the record of interview on 5<sup>th</sup> December 2024, the Applicant placed himself at the scene, specifically at question 23, the Applicant said he left the scene after 10:00pm. The Prosecutor drew the comparison between the Applicant's record of interview and Beta's witness statement which are consistent with each other in this regard. The Prosecutor stated that the alleged offence occurred sometime around 10:30pm and that the Applicant was present at the scene of the crime.
- [10.] The Prosecutor also submitted that the Applicant, during the record of interview implicated his co-accused, which raises a concern for the likelihood that he may be the victim of retaliation. He continued his submissions that although the Applicant and his mother has intention to relocate him to Cat Island, the Prosecutor submits that The

Bahamas is a very small community and that relocating him does not impede him being a victim of retaliation.

[11.] He concluded his submissions that the bail should be refused as a means to maintain public safety and order. It is the duty of the Court to protect the public from individuals who commit these type of offences. He also submitted that there is no unreasonable delay in respect of this matter. The Applicant will be tried within a reasonable time. He concluded that the Applicant is not a fit and proper candidate for bail at this time.

## **Law & Analysis**

[12.] The power to grant bail is found in the **Bail (Amendment) Act, Chapter 103, Section 4(2)** provides the statutory framework for the grant of bail for part C:-

**“4. (2) Notwithstanding any other provision of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged-**

**(a) has not been tried within a reasonable time;**

**(b) is unlikely to be tried within a reasonable time; or**

**(c) should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B), and where the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.”**

[13.] The **First Schedule Part A of the Bail (Amendment) Act** outlines the relevant factors that the Court must consider in an application for bail which provides:-

**“In considering whether to grant bail to a defendant, the court shall have regard to the following factors—**

**(a) Whether there are substantial grounds for believing that the defendant, if released on bail, would—**

**(i) Fail to surrender to custody or appear at his trial;**

**(ii) Commit an offence while on bail; or**

**(iii) Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;**

**(b) Whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;**

**(c) Whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;**

**(d) Whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;**

**(e) Whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;**

- (f) Whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;
- (g) The nature and seriousness of the offence and the nature and strength of the evidence against the defendant.”

[14.] There is an evidential burden on the Respondent to prove that the Applicant would fail to surrender to custody, appear at trial, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was highlighted in the Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**. The Court was tasked with determining whether the judge at first instance made a proper ruling on denying the applicant bail. At paragraph 65 of the judgment, Crane-Scott, J.A. stated:

**“...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would” if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence.”**

[15.] I do find that the evidence adduced before this Court as contained in the witness statement of Beta and the Applicant’s record of interview attached to the Respondent’s Affidavit, is strong and cogent and capable of raising a reasonable suspicion of the Applicant’s involvement in this offence. On the evidence of anonymous witness statement, the witness was able to place the Applicant at the crime scene. This witness also gave a thorough account of the events surrounding the alleged offence and vividly described the Applicant’s clothing.

[16.] Taking into consideration the witness’ familiarity with the Applicant and the length of time that the witness suggests that they had the Applicant in their view strengthens the cogency of the evidence. There is no doubt that this observation of the Applicant was more than a fleeting glance.

[17.] Having read and considered the decision of Williams, J I see no reason why I should depart from his decision. Williams J., decision dated 22<sup>nd</sup> May 2025 thereof provides that:-

**“16. While I bear in mind that I not to engage in a forensic examination, in my view the evidence discloses a prima facie case.**

**17. In respect of public safety and order, I note here, the evidence of “Beta” and the admissions of the applicant contained in the 5 and 6 December 2024 interviews male him both accused and witness. The very real possibility of attack, both retaliatory as assailant and simply as witness, resulting, in the extreme in death, or in the least in serious harm, exists. Concomitantly, the spectre of loss of life, or serious harm to innocent members of the public looms. On either plane, I am of the view that the Applicant, a juvenile, should be kept in custody for his own protection and safety.**

**18. I have considered the utility of imposition of the conditions of reporting, electronic monitoring and curfew in mitigating the risks that here obtain. In my considered view, there are none.**

**19. In the premises, I find that the Applicant is not a fit and proper candidate for bail. Therefore bail is refused.”**

[1.] In the circumstances and having regard to the foregoing reasons, I find that the Applicant is not a fit and proper candidate for bail. Accordingly, the Applicant’s application for bail is denied. The Applicant is advised of his right to appeal.

Dated this 17<sup>th</sup> day of October, 2025

Renaë McKay

The Honourable Madam Justice